

BILL ANALYSIS

C.S.H.B. 1807
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For the past three years, Texas has led the nation in fatal crane accidents resulting from operators having inadequate training and defective equipment.

C.S.H.B. 1807 requires crane operators to be registered with the Texas Department of Licensing and Regulation, establishes a crane operator safety advisory board, and establishes penalties for violations of these provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 1807 amends the Occupations Code to establish provisions regulating crane operators and crane inspectors and to specify the persons who are exempt from these provisions. The bill establishes that its provisions preempt and supersede a local ordinance, rule, or regulation adopted by a political subdivision of Texas relating to the registration and regulation of cranes, crane operators, and crane inspectors. The bill requires the Texas Commission of Licensing and Regulation to adopt rules to administer these provisions and requires the Texas Department of Licensing and Regulation to set fees, as necessary, in amounts reasonable and necessary to cover the cost of administering these provisions.

C.S.H.B. 1807 requires the commission to establish a crane operator safety advisory board and sets forth the composition of the seven-member board, which is appointed by the presiding officer of the commission with the commission's approval. The bill requires that an appointment to the advisory board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. The bill sets forth provisions relating to the terms of office for advisory board members, requirements of the presiding officer of the commission if a vacancy occurs during a term, the appointment of the presiding officer of the advisory board, and the authority of the presiding officer to vote on a matter before the board. The bill prohibits advisory board members from receiving compensation, but entitles the members to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act. The bill sets forth meeting requirements for the advisory board. The bill requires the advisory board to provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of these provisions and rules adopted under these provisions, including advice and recommendations regarding examination content, registration standards, and crane operator standards. The bill exempts the advisory board from statutory requirements that apply to state agency advisory boards in general.

C.S.H.B. 1807 prohibits a person from acting as a crane operator unless the person holds a crane operator registration issued by the department, prohibits an employer or contractor from

employing or using an individual to act as a crane operator unless the individual holds the registration, and makes this provision effective September 1, 2010. The bill requires the commission by rule to establish eligibility criteria for a person to hold a crane operator registration and to adopt revised American National Standards Institute (ANSI) personnel accreditation standards, as appropriate. The bill specifies that the eligibility criteria rules are to require a crane operator to hold a certification issued by the National Commission for the Certification of Crane Operators or an equivalent program approved by the department that meets certain standards.

C.S.H.B. 1807 prohibits a crane owner from allowing the operation of a crane in Texas unless the crane is inspected annually by a department crane inspector who is registered with or is a third-party inspector of the department and who holds a certificate issued by the National Commission for the Certification of Crane Operators or an equivalent inspector certification program approved or developed by the department that meets certain standards. The bill requires an inspector to ensure that a crane complies with periodic inspection requirements established by the most recent revisions of the American Society of Mechanical Engineers (ASME) requirements or other requirements as provided by commission rule. The bill requires a crane owner to ensure that each crane in operation in Texas is inspected daily by a competent person in accordance with the specifications of the manufacturer and ASME as adopted by the commission and provides that an owner's compliance with this requirement establishes an affirmative defense. The bill requires the department to establish the procedures, qualifications, and fees necessary for the registration of crane inspectors. The bill requires a person who holds a certificate of registration to periodically undergo drug and alcohol testing in accordance with commission rules and requires the commission in adopting these rules to consider drug and alcohol testing requirements of the federal Occupational Safety and Health Administration.

C.S.H.B. 1807 establishes that a person who violates the bill's provisions or a rule adopted under these provisions is subject to disciplinary action and authorizes the department to impose an administrative penalty. The bill authorizes the department to issue a cease and desist order if the department determines that an order is necessary to prevent a violation of these provisions or to protect the public health and safety. The bill authorizes the attorney general or the department to institute an action for an injunction or a civil penalty and authorizes the department to immediately stop or prevent the operation of a crane in an emergency. The bill establishes that a person who violates the bill's provisions or a rule adopted under these provisions is liable to the state for a civil penalty not to exceed \$1,000 for each violation, and that each day a violation continues constitutes a separate violation. The bill sets forth requirements for determining the penalty amount. The bill authorizes the department or the attorney general to sue to collect such a penalty and authorizes the state to recover the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

C.S.H.B. 1807 requires the commission to adopt the rules required by these provisions not later than April 30, 2010. The bill defines "ANSI," "ASME," "commission," "crane," "crane inspector," "crane operator," "crane owner," and "department."

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1807 differs from the original by defining "crane" to mean a tower crane that is a nonmobile, power-operated hoisting machine used in construction, maintenance, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally, and provides that a tower crane is a temporary structure and is not subject to building codes or other provisions of law, rule, or ordinance applicable to permanent structures, whereas the original

defines "crane" to mean a machine that is used to lift, lower, and horizontally move a suspended load and that the term includes a hoisting mechanism as an integral part of the machine. The substitute adds a definition not in the original for "crane owner" and removes definitions included in the original for "rigger," "signalperson," and "tower crane."

C.S.H.B. 1807 differs from the original by specifying that a crane operator apprentice or trainee is exempt from the bill's provisions, rather than only a crane operator trainee as in the original, and adds a provision specifying that the apprentice or trainee is a person who is registered with the Office of Apprenticeship of the U.S. Department of Labor, in addition to meeting other requirements. The substitute differs from the original by adding exemptions for persons not exempt in the original. The substitute adds a provision not in the original establishing that the bill's provisions preempt and supersede a local ordinance, rule, or regulation adopted by a political subdivision of Texas relating to the registration and regulation of cranes, crane operators, and crane inspectors.

C.S.H.B. 1807 differs from the original by assigning responsibilities relating to setting fees and applying for registrations to the Texas Department of Licensing and Regulation, rather than the Texas Commission of Licensing and Regulation as in the original, and requiring fees for administering the bill's provisions to be set as necessary, whereas the original specifies that fees be set for applications, registrations, and renewals.

C.S.H.B. 1807 adds provisions not in the original relating to the establishment of a crane operator safety advisory board, including the composition, terms, compensation, meeting requirements, authority, and responsibilities of the advisory board.

C.S.H.B. 1807 removes references in the original to a certificate of registration in provisions relating to the registration of crane operators by the department. The substitute differs from the original by prohibiting an employer or contractor from employing or using an individual to act as a crane operator unless the individual holds a crane operator registration, whereas the original prohibits an employer or contractor from allowing an individual to act as a crane operator without the registration. The substitute removes provisions included in the original relating to the registration of signalpersons and riggers and removes references included in the original to mobile or tower cranes. The substitute adds a provision not in the original requiring the commission to adopt revised American National Standards Institute (ANSI) personnel accreditation standards as appropriate to protect public health and safety. The substitute differs from the original by requiring rules governing crane operator eligibility to require a crane operator certification issued by an equivalent crane operator certification program to have personnel accreditation standards at least as stringent as the most recent ANSI and American Society of Mechanical Engineers (ASME) standards as adopted by the commission or as adopted by commission rule, respectively, whereas the original requires such rules to require an equivalent crane operator certification program to have personnel accreditation standards at least as stringent as the ANSI standards as of September 1, 2009, and specifically ASME B30.3-2004 Construction Tower Cranes and ASME B30.5-2007 Mobile and Locomotive Cranes standards. The substitute removes provisions included in the original specifying the eligibility requirements for a signalperson or rigger and requiring rules to establish separate categories of registration for a basic rigger, an intermediate rigger, and an advanced rigger, with performance standards for each category.

C.S.H.B. 1807 removes provisions in the original relating to the application for and renewal of a certificate of registration for a crane operator. The substitute differs from the original by prohibiting a crane owner from allowing the operation of a crane in Texas unless the crane is annually inspected by a department crane inspector, whereas the original prohibits a person from operating a crane in Texas unless the crane is annually inspected by a crane inspector in accordance with certain federal laws. The substitute adds a provision not in the original requiring the crane inspector to be registered with the department or to be a third-party inspector of the department. The substitute differs from the original by allowing the required crane

inspector certification to be issued by an equivalent inspector certification program either developed or approved by the department, whereas the original requires the program to be approved by the department. The substitute removes a provision included in the original prohibiting a person from operating a new or altered crane unless the crane has been inspected by a crane inspector who meets the qualifications required under the bill's provisions. The substitute differs from the original by assigning responsibilities for ensuring daily crane inspections to the crane owner, rather than the contractor or other person responsible for the operation of the crane as in the original, and by assigning responsibilities for maintaining inspection records and making such records available on request to the crane owner, rather than the contractor or hiring person as in the original. The substitute adds a provision not in the original providing that an owner's compliance with the requirement for daily crane inspections establishes an affirmative defense. The substitute adds a provision not in the original requiring the department to establish the procedures, qualifications, and fees necessary for the registration of crane inspectors.

C.S.H.B. 1807 removes provisions in the original requiring the maintenance and availability of records of each inspection performed on a crane. The substitute adds provisions not in the original requiring a person who holds a certificate of registration to periodically undergo drug and alcohol testing and requiring the commission in adopting rules relating to this practice to consider federal drug and alcohol testing requirements.

C.S.H.B. 1807 adds a provision not in the original authorizing the department to immediately stop or prevent the operation of a crane in an emergency. The substitute adds provisions not in the original creating a civil penalty for a violation of the bill's provisions.

C.S.H.B. 1807 differs from the original by changing the effective dates of certain provisions.